UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS

OFFICERS ASSOCIATION,

Cases 4-CA-37648,

Respondent :

4-CA-37649 and

4-CA-37652

and

: :

BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION, Charging Party

ANSWERING BRIEF OF RESPONDENT, PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, TO EXCEPTIONS

I. FACTUAL AND PROCEDURAL HISTORY

Charging Party, Business Agents Representing State Union Employees Association (BARSUEA) is the exclusive bargaining representative of the unit consisting of full time and regular part time Business Agents and support staff employees employed by the Pennsylvania State Corrections Officers Association (PSCOA). (General Counsel Exhibit 6).

On or about October 29, 2010, a Consolidated Complaint was filed which alleges that, on or about August 20, 2010, PSCOA discharged various unit employees without prior notice and without affording BARSUEA an opportunity to bargain with PSCOA concerning said conduct. After PSCOA filed an Answer to the Consolidated Complaint, on November 10, 2010, amendments to the Consolidated Complaint were filed maintaining that on or about July 19, 2010, PSCOA and BARSUEA entered into a collective bargaining agreement effective by its terms from July 19, 2010 through July 19, 2015. The Consolidated Complaint and amendments thereto further allege that, since

on or about July 20, 2010, PSCOA has failed and refused to give effect to the collective bargaining agreement allegedly entered into on July 19, 2010. The Consolidated Complaint and amendments thereto further allege that, on or about August 27, 2010, PSCOA repudiated the collective bargaining agreement.

After PSCOA filed an Answer to the amendments to the Consolidated Complaint, hearings were held on January 26 and 27, 2011 before Administrative Law Judge Robert A. Giannasi. On March 17, 2011, Administrative Law Judge Robert A. Giannas issued a decision in which he found that the PSCOA violated Section 8 (a)(5) and (1) of the Act by discharging employee Sonya Corish without giving the Union prior notice and opportunity to bargain regarding the discharge or its effects, violated Section 8 (a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge the PSCOA's Business Agents, and violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing information to BARSUEA. On or about April 13, 2011, the Acting General Counsel filed Exceptions and a Brief in Support of the same. PSCOA files this Answering Brief to said Exceptions and Brief.

Because a stenographic record was made, the PSCOA will not review all of the testimony in evidence in this section. However, the PSCOA will review relevant testimony and evidence in the argument section of its brief.

II. STATEMENT OF QUESTION PRESENTED

Whether PSCOA violated Section 8(a)(1), 8(a)(5), and 8(d) of the National Labor Relations Act when it:

- (A) refused to give effect to the collective bargaining agreement executed on July 19, 2010; and
- (B) discharged various unit employees on or about August 20, 2010?

III. LEGAL ARGUMENT

A. PSCOA DID NOT VIOLATE THE NATIONAL LABOR RELATIONS ACT WHEN IT REFUSED TO GIVE EFFECT TO THE COLLECTIVE BARGAINING AGREEMENT EXECUTED ON JULY 19, 2010.

The Consolidated Complaint and amendments thereto maintain that PSCOA failed and refused to give effect to the collective bargaining agreement executed on July 19, 2010. The Administrative Law Judge, Decision at pages 4 through 7, found that PSCOA did not violate the Act when it failed to give effect to the collective bargaining agreement because former PSCOA President Donald McNany did not have actual authority and apparent authority was not present.

Substantial record evidence supports the ALJ's decision in this case and establishes that the collective bargaining agreement executed by Donald McNany, on behalf of PSCOA, and Shawn Hood, on behalf of BARSUEA, on July 19, 2010 was not executed with the actual authority of PSCOA or the apparent authority as defined by various decisions handed down by the Board. In contrast, substantial record evidence supports the ALJ's finding that McNany and Hood colluded to commit fraud against PSCOA when they signed the collective bargaining agreement.

The Board applies the common law principles of agency when determining whether an employee is acting with either actual or apparent authority on behalf of an employer when the employee makes a particular statement or takes a particular action.

Cooper Industries, 328 NLRB 145 (1999).

The standards for determining apparent authority were discussed in *Service Employees Local 87 and Westbay Maintenance*, 291 NLRB 82 (1998), as follows:

Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the act in question. Thus, either the principal must intend to cause the third party to believe that the agent is authorized to act for him, or the principle should realize that this conduct is likely to create such a belief.

(Citations Omitted). Two conditions must be satisfied in order to establish apparent authority, a manifestation by the principal to a third party and a reasonable basis for the third party to believe that the authority granted to the agent encompasses the contemplated activity. See, *e.g.*, *Coral Realty Co.*, LLC, 340 NLRB 366 (203).

In this matter, the evidence put forth by General Counsel to support a finding of actual and/or apparent authority is the testimony of Don McNany and Shawn Hood. Both McNany and Hood lied at the hearing.

1. Actual Authority

The Constitution of PSOCA delegates the authority to enter into agreements such as a collective bargaining agreement and to deal with personal matters to the President subject to the approval of the Executive Board. Specifically, Article V of the PSCOA Constitution provides that the President shall have the authority to appoint and discharge representatives and employees of the Association subject to the approval of the Executive Board. (General Counsel Exhibit 6, page 5). Article VI provides that the Executive Board shall have the power to supervise all business and financial affairs of the Association and to authorize all expenditures deemed necessary to effectuate the objectives of the Association. (General Counsel Exhibit 6, page 9). The PSCOA Constitution further provides that the Executive Board shall formulate and put into operation a fringe benefit plan or plan of benefits for employees and more responsible for the establishment of general personnel policies, rules and regulations relating to the employees of the

Association. (General Counsel Exhibit 6, page 11). When Don McNany signed the Collective Bargaining Agreement on July 19, 2010, he did not have actual authority to do so because it was not authorized by the Executive Board.

Roy Pinto testified that he is the current President of PSCOA being sworn in on July 20, 2010. (Transcript p. 160). He testified that he was the Eastern Regional Vice President from 2001 through 2010. (Transcript pp. 160-161). He testified that Jason Bloom, Western Vice President, Ralph Tressler and Mark Truszkowski, Executive Board Members, were also sworn in on July 20, 2010. (Transcript p. 161). Pinto testified that the remaining members of his election slate won the majority of votes on August 17, 2010 and were sworn in that same day. (Transcript pp. 161-162).

Pinto testified that PSCOA entered into a collective bargaining agreement that was entered into evidence as Respondent Exhibit 10. (Transcript p. 204). He testified that the contract was negotiated over a three month period and that it was approved by the Executive Board. (Transcript p. 204). Respondent Exhibit 10 is the only valid collective bargaining agreement between the parties.

The evidence supports a finding that Don McNany did not seek Board approval as required. Jason Bloom testified that he was elected Western Regional Vice President of PSCOA on June 25, 2010. (Transcript p. 225). He testified that he was a State Executive Board member for two and a half years beginning in 2007. (Transcript p. 226). He also testified that he was not aware that Don McNany signed a signed a collective bargaining agreement on July 19, 2010 and that the matter was not brought before the Executive Board. (Transcript p. 232). Pinto also testified that the collective bargaining agreement

signed by Don McNany and Shawn Hood on July 19, 2010 was not approved by the Executive Board. (Transcript p. 196).

The evidence in this matter shows that all employee issues were brought before and approved by the Executive Board. There was also a policy in place that all expenditures of over \$5000 had to be approved by the Executive Board.

Pinto testified that he was aware of the policy being put into place that requires the authorization of the Executive Board for any expenditure over \$5,000. (Transcript p. 206).

Tim Walsh testified that he is the Executive Vice President of PSCOA and took the position on August 18, 2010. (Transcript p. 237). He testified that he was an Executive Board member from 2007 through 2010. (Transcript p. 238).

Walsh testified that, in response to a subpoena from the National Labor Relations Board, he reviewed and pulled the meeting minutes and policies of PSCOA. Walsh identified Respondent's Exhibit 14 through 23 as policies which he pulled from the employee policy book of PSCOA. (Transcript p. 240). Walsh also identified Respondent Exhibit 3 as a policy which he pulled from the policy book of PSCOA. (Transcript p. 241). Walsh confirmed that all of the policies have some indication on them that they were adopted by the Executive Board of PSCOA. (Transcript p. 241). He indicated that some of them have the signature of Sam Brezler, Treasurer of PSCOA, and some them have the signature of Don McNany. (Transcript p. 241).

Walsh also identified Respondent Exhibits 24-28 as portions of the meeting minutes from 2008, 2009 and 2010. (Transcript p. 244). Walsh confirmed that

Respondent Exhibit 27 discusses the fact that expenditures of over \$5000 have to be approved by the E Board. (Transcript p. 247).

Walsh also identified Respondent Exhibit 29 as a vote sheet to pay all secretary and treasurers \$250. quarterly and Respondent Exhibit 30 as an Executive Board sheet to provide a Christmas bonus. (Transcript pp. 252-253).

Even Don McNany confirmed that there was a policy in place with PSCOA that any expenditure over \$5,000. had to be approved by the Executive Board. (Transcript p. 63).

McNany also confirmed that he did not request authority from the Executive Board of PSCOA to sign the collective bargaining agreement. (Transcript pp. 37-38). McNany testified that he did not advise every member of the Executive Board that he was going to sign the collective bargaining agreement on July 19, 2010. (Transcript p. 72). McNany testified that he did not know whether or not the Executive Board members received a copy of the collective bargaining agreement after he delivered it to Harrisburg. (Transcript p. 72).

Because it is self evident that the collective bargaining agreement involved an employee matter and an expenditure of more than \$5,000 (General Counsel Exhibit 9), Executive Board approval was required. Even McNany testified that Business Agents would receive \$5,000. per month credit card and \$100,000. in life insurance coverage. (Transcript pp. 61-62). McNany confirmed that the collective bargaining agreement also provided for a severance package of two months' salary for every year of service. (Transcript p. 62). McNany testified that Shawn Hood would receive fourteen months salary which would entitle him to a single payment of over \$70,000. (Transcript p. 63).

Substantial record evidence supports the ALJ's finding that Don McNany did not have actual authority to enter into the Collective Bargaining Agreement because it was not authorized by the Executive Board. Consequently, the Administrative Law Judge did not err when he held that actual authority was not shown in this matter.

2. Apparent Authority

The evidence in this case does not establish that a reasonable basis existed for anyone to believe that PSCOA granted Don McNany authority, without Board approval, to negotiate a collective bargaining agreement at, among other places, McDonalds, in less than a week after he was voted out of Office and abandoned his office at PSCOA headquarters.

The union officers of BARSUEA knew McNany was voted out of office the very same day the Petition for Representation was filed. Pinto testified that Shawn Hood and Patricia Hurd were present at the election count which occurred on June 25, 2010. (Transcript p. 185). Pinto testified that, in the past, after a contested election, the newly elected individual would take over on July 1st. (Transcript p. 186). Pinto testified that during this current election, he believed that the winners of the election would take over on July 1st based upon his past experience. (Transcript pp. 187-188).

BARSUEA officers also knew McNany vacated his office in Harrisburg. Pinto testified that McNany had vacated his office on June 29, 2010 located at 2421 North Front Street, Harrisburg, PA. (Transcript p. 188). Pinto testified that McNany moved out of his office on Tuesday, June 29, 2010 and that he had not seen Don McNany back in Harrisburg since that time. (Transcript pp. 190-191).). Pinto testified that he moved into the President's office at PSCOA Headquarters on June 29, 2010. (Transcript pp. 203).

Pinto testified that Shawn Hood requested a meeting around the second week of July with him and Mr. Hood asked Mr. Pinto whether he was going to fire him, and Pinto responded that that had not been determined yet. (Transcript p. 202). McNany testified that after the election was held on June 25, 2010, he began to move his personal items out of his office in Harrisburg the follow week. (Transcript pp. 54-55). McNany testified that he was notified by Roy Pinto on July 15, 2010 that Roy Pinto, Jason Bloom, Ralph Tressler and Mark Truszkowski would be sworn into office on July 20, 2010. (Transcript pp. 57-58, Respondent's Exhibit 2).

BARSUEA also knew that Roy Pinto was being sworn in to office on July 20, 2010. It was no accident that the Collective Bargaining Agreement was signed on July 19, 2010, in Indiana, Pennsylvania. Pinto testified that after the Court issued its Order on July 15, 2010 (General Counsel Exhibit 8), he e-mailed Don McNany (Respondent Exhibit 2) to inform him that the officers were going to be sworn in on July 20, 2010. Pinto testified that notice of the swearing in ceremony was posted on PSCOA.org. (Transcript p. 194). Even though most Collective Bargaining Agreements take months to negotiate, BARSUEA was able to negotiate a contract in less than one week with only three negotiation sessions.

McNany testified that PSCOA engaged in collective bargaining with BARSUEA after the July 12, 2010 election. (Transcript p. 33). McNany testified that there were three separate occasions and a couple days they talked on the phone for negotiations. (Transcript p. 34).

The only evidence of apparent authority was the less than credible testimony of McNany and Hood. McNany testified that Hood asked him if anyone else needs to be

present in that he told him no. (Transcript pp. 34-35). McNany testified that he never told Hood that the Executive Board needed to approve or negotiate the contract in that he believed that he had the authority to negotiate and sign the collective bargaining agreement based upon the Constitution. (Transcript p. 35). McNany identified General Counsel Exhibit 9 as the collective bargaining agreement between PSCOA and BARSUEA. (Transcript p. 36). McNany testified that the agreement was executed on July 19, 2010. (Transcript p. 37). McNany testified that he was able to negotiate a contract within one week from July 12, 2010 through July 19, 2010. (Transcript p. 59). McNany testified that the parties met on July 14, 16 and 19, 2010 and had phone calls on July 17 and 18, 2010. (Transcript p. 59). McNany testified that the collective bargaining agreement he signed on July 19, 2010 (General Counsel Exhibit 9) and provided for salaries in the range of \$76,000. (Transcript p. 61). McNany testified that the collective bargaining agreement was signed on July 19, 2010 in Indiana, Pennsylvania, which is an hour and half east of Pittsburgh. (Transcript p. 69). McNany confirmed that at the time he signed the collective bargaining agreement he had cleared all his personal effects from his office in Harrisburg. (Transcript pp. 69-70). McNany testified that the first collective bargaining session was held on July 14, 2010 at McDonalds in Butler, Pennsylvania and that the second session held on July 16 was held at his house. (Transcript p. 73).

Shawn Hood testified that they met approximately four times prior to entering the collective bargaining agreement on July 19, 2010. (Transcript p. 87). He indicated that he had asked McNany whether or not the collective bargaining agreement had to be approved by the Executive Board and that he said no. (Transcript pp. 87-88).

However, during his testimony he admitted he submitted false mileage reports and the evidence also shows that he received two large unwarranted payments from PSCOA before the new Executive Board took over. The so-called collective bargaining agreement was just another tool for Hood to use to defraud PSCOA.

Hood confirmed that Respondent Exhibit 4 was his voucher reimbursement signed by himself for mileage. (Transcript pp. 94-95, Respondent Exhibit 4). Hood confirmed that he asked for reimbursement for mileage on June 25, 2010 to go from Pittsburgh to Crescent, which is two hours east of Pittsburgh. (Transcript p. 96). Hood confirmed that he was untruthful in submitting his mileage reports for June 25, 2010. (Transcript p. 98).

Further evidence that Hood knew McNany did not have actual or apparent authority to enter into the collective bargaining agreement is the Petition for Representation were his listed Roy Pinto as the employer representative. Hood testified that he was a Business Agent assigned to western Pennsylvania. (Transcript p. 99). He confirmed that the structure of PSCOA contained three vice presidents including an Executive Vice President, Western Vice President and Eastern Vice President. (Transcript p. 100). Hood testified that the Western Vice President was his immediate supervisor. (Transcript p. 100). Hood testified that although Percy Poindexter was the Western Vice President and Ed McConnell was the Executive Vice President, he listed Roy Pinto, Eastern Vice President, on the Petition for Representation which was filed the day McNany was voted out. (Transcript pp. 100-101, Respondent Exhibit 3, p. 4). Hood knew McNany did not have any authority any longer.

Hood would like us to believe that, when he met McNany at McDonalds on July 14, 2010 in Butler, Pennsylvania for their first negotiation session which is forty minutes north of his home in Pittsburgh, far from PSCOA headquarters in Harrisburg (Transcript pp. 104-105), it was all above board. Yet, that same day he was again defrauding PSCOA with his mileage voucher. Hood confirmed that he had submitted a voucher, Respondent Exhibit 6, for travel to Somerset/Fayette, two different State correctional institution facilities, for July 14, 2010. Hood confirmed that Somerset is an hour and ten minutes east of Pittsburgh and that Fayette is an hour and twenty minutes south of Pittsburgh. (Transcript p. 107). A careful review of Respondent Exhibit and Hood's testimony reveals that he lied again by claiming mileage for being in many different places at once.

Although Hood testified that he did not collude with Don McNany in regard to the collective bargaining agreement entered on July 19, 2010, he confirmed that he received a payment from PSCOA in the amount of \$76,356. on June 24, 2010. (Transcript p. 125). He also confirmed that he submitted a leave request payment on June 30, 2010 in the amount of \$18,477. (Transcript p. 126). The evidence showed that he was not entitled to the payments.

John Chernavage testified that he is currently the Secretary/Treasurer for PSCOA and began in that position on August 18, 2010. (Transcript pp. 265-266). Chernavage testified that he took control of the records of PSCOA on August 18, 2010 and there were no leave records available for the Business Agents. Chernavage testified that he is familiar with the single salary payment of \$76,356.66 to Business Agent Shawn Hood which occurred on June 24, 2010. (Transcript p. 268). He identified Respondent Exhibit 31 as the records surrounding said payment and concluded that he could not find any

reason or any records that support the payment to Shawn Hood. (Transcript p. 274-276). Chernavage also testified that Shawn Hood also tried to seek reimbursement for \$11,692.50 for mileage from PSCOA for the period of July 1 through July 26, 2010. (Transcript p. 278, Respondent Exhibit 32). Chernavage confirmed that a check was paid for that amount to Shawn Hood. (Transcript p. 278). In regard to the alleged back pay received by Shawn Hood, he testified that he made the claim for the back pay and than received the payment within a few weeks. (Transcript p. 291).

The evidence in this case does not establish that a reasonable basis existed for anyone to believe that PSCOA granted Don McNany authority, i.e., apparent authority. Substantial evidence supports the ALJ's decision that apparent authority was not shown by the evidence presented by the General Counsel.

B. PSCOA DID NOT VIOLATE THE NATIONAL LABOR RELATIONS ACT WHEN IT DISCHARGED VARIOUS UNIT EMPLOYEES ON AUGUST 20, 2010.

The Consolidated Complaint and amendments thereto alleges that PSCOA discharged unit employees on or about August 20, 2010 without prior notice to BARSUEA and without affording BARSUEA an opportunity to bargain with PSCOA concerning the conduct in violation of the National Labor Relations Act. The ALJ did not err in finding that PSCOA did not violate Section 8 (d), 8(a)(1) and 8(a)(5) of the Act by failing to give effect to and/or by repudiating the purported collective bargaining agreement with BARSUEA. The ALJ correctly found that:

"The Union had adequate notice of the impending terminations and its failure to request bargaining permitted Respondent to carry out the termination decisions implicit with the July 17 notices unilaterally. Accordingly, the Complaint is dismissed insofar as it alleges a violation with respect to the discharge of the Business Agents on August 20, 2010, without giving the Union prior notice or opportunity to bargaining."

Decision at page 8.

Substantial record evidence in this matter supports the ALJ's finding that BARSUEA was notified of the terminations and did not request bargaining over the same. In any event, inasmuch as a discipline policy was in place prior to BARSUEA being certified in July of 2010, there was no duty to bargain.

In *Alan Richey, Inc. and Warehouse Union Local 6,* 354 NLRB 79, (2009) the Board, relying on *Fresno Bee,* 337 NLRB 1161 (2002), held that an employer had not violated Section 8(a)(5) of the Act by unilaterally imposing discipline on employees where the employer's discipline was handed down pursuant to a five step progressive disciplinary system which pre-dated the union's certification. The Board found that the employer exercised discretion in applying those policies within the perimeters of a progressive disciplinary procedure. The Board stated, in relevant part:

"In Fresno Bee, as here, the General Counsel alleged an unlawful failure to engage in pre-disciplinary bargaining. There, as here, the employer's disciplinary policies remain unchanged, but the employer exercised some discretion in applying these policies. There, as here, (and unlike in Washoe Medical Center), the union demanded pre-disciplinary bargaining. Id. at 1176. The Judge in Fresno Bee held that the employer had no duty to bargaining before imposing the discipline, 337 NLRB at 1186-1187, and the Board affirmed the Judge's decision in relevant part, leaving her analysis of Section 8(a)(5) issue entirely undisturbed. Id. at 1161. Accordingly, we apply Fresno Bee, which is extant Board law and which prescribes dismissal of the alleged violation here. [Footnote 11 - In our view Fresno Bee and Washoe Medical Center are not irreconcilable. Washoe Medical Center, the union had not requested before-the-fact bargaining with regard to imposition of disciplinary action, and the footnote addressing the issue stated necessary, but not sufficient, condition for finding the violation alleged there."

In this matter, not only did substantial record evidence show that BARSUEA was notified and did not request bargaining, PSCOA's discharges of the unit employees is the

type of employer conduct found lawful in *Alan Richey*. PSCOA's discharges were handed down pursuant to a progressive disciplinary system which pre-dated BARSUEA's certification. The discretion, if any, that PSCOA exercised in applying the policy was within the perimeters of the progressive disciplinary procedure.

After the swearing in, Pinto testified that he had Vice President Jason Bloom start evaluating and making determinations about what they were going to do with staff members. (Transcript p. 195). Pinto testified that Respondent Exhibit 7 was sent to all Business Agents to notify them and to let them know that they were supposed to make arrangements to return all property to the office manager. (Transcript pp. 195-196). Pinto testified that he had Jason Bloom conduct interviews and make recommendations to him. (Transcript p. 196). Pinto testified that the Executive Board was briefed regarding the interviews and the changes that were going to be made and that they were approved by the Executive Board. (Transcript p. 198). Pinto testified that the rest of the current Board Members were elected at a run off on August 17th and sworn in that same day. (Transcript p. 198). Pinto testified that he issued the letters date August 20, 2010 marked as General Counsel Exhibit 14 because he believed that he had just cause to terminate the Business Agents. (Transcript pp. 200-201). He testified that it was based upon a combination of performance recently discovered and observed over a period of time. (Transcript p. 201). Pinto testified that he did not believe that a counseling session or suspension was appropriate. (Transcript p. 201).

Pinto testified that from July 17, 2010 to August 20, 2010 no Business Agent approached him and asked him to sit down and bargain. (Transcript p. 201). He also

testified that prior to July 17, 2010, no Business Agent approached him to sit down and bargain. (Transcript p. 201).

Pinto testified that Shawn Hood requested a meeting around the second week of July with him and Mr. Hood asked Mr. Pinto whether he was going to fire him, and Pinto responded that that had not been determined yet. (Transcript p. 202).

Pinto testified that Sonya Cornish was terminated the last week of July because she did not comply with a request and she was discharged. (Transcript p. 164). Pinto testified that Robert Smith and Larry Blackwell, after interviews and talking to Vice President Bloom, were kept on as Business Agents and the two letters to them were rescinded. (Transcript p. 165). Pinto testified that prior to terminating the Business Agents; they were all interviewed by Jason Bloom. (Transcript p. 166).

Pinto testified that the disciplinary procedure in Respondent's Exhibit 3 was followed but that the discipline warranted discharge. (Transcript p. 166). Pinto testified that the employees did not receive a counseling session, a letter of recommendation or a suspension, because "their performances were so bad they didn't require it." (Transcript pp. 166-167). Pinto testified that he brought up the firing of Sonya Cornish with the Executive Board. (Transcript p. 167). Pinto further testified that the discipline policy, Respondent Exhibit 3, was followed but that the job performances were so bad that he didn't follow the steps. (Transcript p. 168). Pinto testified that all thirteen Business Agents were interviewed and were given a chance to present their case. (Transcript p. 169).

Jason Bloom testified that after he was elected Western Vice President in June 2010, he was assigned the task of reviewing the Business Agents of PSCOA. He testified

that he sent out a letter dated July 17, 2010, Respondent's Exhibit 7, to all thirteen Business Agents. (Transcript p. 227). He identified the remainder of Respondent Exhibit 7 as the responses he received from the various Business Agents. (Transcript p. 228). For example, the letter dated July 17, 2010 went out on letterhead listing Roy Pinto as the President and informed individuals who did not wish to remain with PSCOA to make arrangements to return all property to PSCOA. (Respondent Exhibit 7). In response, for example, John Miller stated that his e-mail was to be considered his "letter of interest to remain in [his] current position as Business Agent with the Pennsylvania State Corrections Officers Association." (Respondent Exhibit 7). Curt Heisman wrote back that he appreciated consideration to continue his employment with PSCOA. (Respondent Exhibit 7, p. 3). Larry Blackwell wrote back on July 17 that he is interested in keeping his job as a BA. (Respondent Exhibit 7, p. 6).

Jason Bloom testified that he conducted interviews beginning on August 3, 2010 and ending on August 18, 2010. (Transcript p. 229). He indicated that he informed all of the Business Agents at the beginning of the interview that there were thirteen open positions. (Transcript p. 230). Bloom testified that Patricia Hurd stated in her interview that she was going to treat it as her exit interview. (Transcript p. 230). He testified that there was no question that the individuals knew that all of the positions were open based upon body language, demeanor, answers to the questions in the interview as a whole. (Transcript pp. 1230-231). Jason Bloom testified that he ended each interview by asking each person whether they had a comments or questions. (Transcript p. 231). Bloom testified that no Business Agent brought up BARSUA during the interview process. (Transcript p. 231). He testified that nobody requested bargaining during the interview

process nor any clarification questions. (Transcript p. 231). In regard to Business Agents Blackwell and Smith, he testified that after they were issued termination letters, he made recommendations for them to be kept on board. (Transcript p. 232).

Bloom testified that Sonya Cornish was terminated on August 18, 2010 after she was asked for information and did not respond. (Transcript pp. 233-234). Bloom testified that the Executive Board held an impromptu meeting on August 17, 2010 after the second election and that the Executive Board approved all of the terminations. (Transcript p. 234).

Hood confirmed that he received a letter dated July 17, 2010 from Jason Bloom Vice President of PSCOA asking him to submit a letter of interest to be considered for a BA position in the PSCOA. (Transcript pp. 118-119, Respondent Exhibit 7). Although Hood testified throughout the proceeding that he did not believe his job was in jeopardy or that he would be terminated he testified that he submitted his leave request (Respondent Exhibit 8), because when you separate service you will be compensated for your unused leave. (Transcript pp. 131-132).

Patricia Hurd testified that she has been a correctional officer with the Commonwealth of Pennsylvania since July of 1998 and has been working as a Business Agent for PSCOA since November 2001. (Transcript pp. 138-139). Hurd testified that she received the letter dated July 17, 2010 from Jason Bloom, Respondent Exhibit 11 and she knew her job was being considered at that point in time. (Transcript pp. 148-149). She confirmed that she was interviewed on August 11. (Transcript p. 149). Hurd confirmed that she responded to the July 17 letter by stating that "I do not intend to resign

my position at this time." (Respondent Exhibit 7, p. 12). Hurd testified that she did not request bargaining as to the July 17, 2010 letter. (Transcript p. 151).

Substantial record evidence in this matter supports the ALJ's finding that BARSUEA was notified of the terminations and did not request bargaining over the same. In any event, inasmuch as a discipline policy was in place prior to BARSUEA being certified in July of 2010, there was no duty to bargain. In contrast, General Counsel argues that the collective bargaining agreement that was executed by the former president of PSCOA without knowledge of the Executive Board was a request of BARSUEA to bargain over any terminations. However, the execution of a purported Collective Bargaining Agreement by Don McNany, without Board approval, negotiated at, among other places, McDonalds, in less than a week after he was voted out of Office and abandoned his office at PSCOA headquarters cannot support such a finding.

WHEREFORE, Pennsylvania State Corrections Officers Association respectfully requests that the Exceptions of the Acting General Counsel be dismissed and that the decision of the Administrative Law Judge be affirmed.

Respectfully submitted:

MGHTMAN WELBY STOLTENBERG & CAPUTO

Richardson Todd Eagen

PA Atty. I.D. No. 79496 2705 North Front Street

Harrisburg, PA 17110

717-234-0111

Attorney for Pennsylvania State Corrections Officers Association

Date: April 26, 2011

CERTIFICATE OF SERVICE

I hereby certify this 26th day of April, 2011 that a copy of the foregoing ANSWERING BRIEF OF RESPONDENT, PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, TO EXCEPTIONS was served upon the person(s) and in the manner indicated below by depositing same in the United States mail, with first class postage, prepaid, from Harrisburg, Pennsylvania, as follows:

Henry R. Protas Cara L. Fies-Keller National Labor Relations Board, Region Four 615 Chestnut Street, 7th Floor Philadelphia, PA 19106

LIGHTMAN WELBY STOLTENBERG & CAPUTO

Richardson Todd Eagen

PA Atty. I.D. No. 79496

2705 North Front Street Harrisburg, PA 17110

717-234-0111

Attorney for Pennsylvania State Corrections Officers Association

ORDER SECTION
NURS IN S: IN
RECEIVED